REMARKS

Claims 1, 4-9, 12, 13, 15, 16, 18, 19 and 21-23 were pending in the Application. Claim 1 is an independent claim and claims 4-9, 12, 13 and 15 depend there from. Claim 16 is an independent claim and claims 18-19 and 21-23 depend there from. Applicant respectfully requests reconsideration of the application in light of the following remarks.

Rejections Under 35 U.S.C. §103(a) – Jiang, Boland and Su

Claims 1-2, 5-8, 12-13, 15-19 and 21-23 were rejected under 35 U.S.C. §103(a) as being unpatentable over Jiang et al. (U.S. Patent No. 6,901,362, hereinafter "Jiang") in view of Boland (U.S. Patent No. 7,171,357) and further in view of Schuster et al. (U.S. Patent No. 6,151,636, hereinafter "Schuster").

With regard to an obviousness rejection, MPEP 2142 states that in order for a prima facie case of obviousness to be established, three basic criteria must be met, one of which is that the reference or combination of references must teach or suggest all the claim limitations. Further, MPEP 2143.01 states that "the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art suggests the desirability of the combination", and that "although a prior art device 'may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so'" (citing In re Mills, 916 F. 2d 680, 16 USPQ 2d 1430 (Fed Cir. 1990)). Moreover, MPEP 2143.01 also states that the level of ordinary skill in the art cannot be relied upon to provide the suggestion…," citing Al-Site Corp. v. VSI Int'l Inc., 174 F. 3d 1308, 50 USPQ 2d. 1161 (Fed Cir. 1999).

Claim 1 is amended to recite, "A method for classifying an audio signal, the method comprising:
        receiving an audio signal to be classified;

dividing the audio signal at least into sub-bands compatible with speech and incompatible with speech;

calculating a ratio of the sub-bands;

comparing the ratio to a threshold value; and

classifying the audio signal based upon the comparison, wherein classifying the audio signal occurs after decoding the audio signal, and wherein classifying the audio signal further comprises turning on a flag in a header of a packet of digital audio information, wherein the flag provides an indication of classification of the audio signal based upon comparison of the ratio and the threshold value.

Applicant respectfully submits that the proposed combination of references fails to teach, suggest, or disclose at least, for example, "classifying the audio signal based upon the comparison, wherein classifying the audio signal occurs after decoding the audio signal, and wherein classifying the audio signal further comprises turning on a flag in a header of a packet of digital audio information, wherein the flag provides an indication of classification of the audio signal based upon comparison of the ratio and the threshold value" as set forth in Applicant's independent claim 1.

The Applicant appreciates the Examiner's recognition that "Jiang et al. in view of Boland does not disclose wherein classifying the audio signal further comprises turning on a flag in a header of a packet of digital audio information, wherein the flag provides an indication of classification of the audio signal based upon comparison of the ratio and the threshold value." (Office Action, Page 3, Lines 13-16). However, Examiner has indicated that "Su teaches that once the speech signal is routed to the determination controller, a predetermined flag in the header of the speech frame is analyzed to determine classification of the speech frame (col. 4, lines 57-67)." Office Action at 3. Examiner has also indicated that "Su further discloses classifying the audio signal occurs after decoding the audio signal (col. 4, line 65 – col. 5, line 10; col. 6, lines 24-30)", Office Action at 5 (regarding claim 10).

Assignee respectfully traverses that "Su further discloses classifying the audio signal occurs after decoding the audio signal". In Su, col. 4, line 65 – col. 5, line 10,

It is noted that in Su, "Once the speech signal 210 is routed to the rate determination controller 220, a predetermined flag in the header of the speech frame is analyzed to determine classification of the speech frame." Col. 6, Lines 59-62. Su, Figure 2, referenced in the foregoing is reproduced below for convenience.
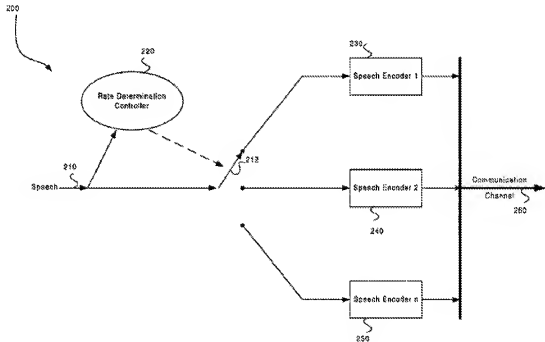

Figure 2

As can be seen, the foregoing does not occur after decoding; in fact the foregoing occurs prior to encoding. Accordingly, Assignee respectfully traverses the rejection because Su does not teach or fairly suggest "classifying the audio signal based upon the comparison, <u>wherein classifying the audio signal occurs *after decoding the audio signal*</u>, and wherein classifying the audio signal further comprises turning on a flag in a header of

a packet of digital audio information, wherein the flag provides an indication of classification of the audio signal based upon comparison of the ratio and the threshold value".

Because the combination of Jiang in view of Boland and in further view of Su fails to teach or suggest all the claim limitations as required by MPEP 2142, a rejection under 35 U.S.C. §103(a) cannot be maintained.

Regarding claim 16, Applicant respectfully submits that the proposed combination of references fails to teach, suggest, or disclose at least, for example, "an output indicating a classification of the audio signal, wherein classifying the audio signal occurs after decoding the audio signal, and wherein indicating classification comprises turning on a flag in a header in a packet of digital information, wherein the flag may be used to determine whether the audio signal is mathematically processed further or directed to a receiver," as set forth in Applicant's independent claim 16.

However, Examiner has indicated that "Su teaches that once the speech signal is routed to the determination controller, a predetermined flag in the header of the speech frame is analyzed to determine classification of the speech frame (col. 4, lines 57-67)." Office Action at 3. Examiner has also indicated that "Su further discloses classifying the audio signal occurs after decoding the audio signal (col. 4, line 65 – col. 5, line 10; col. 6, lines 24-30)", Office Action at 5 (regarding claim 10).

Assignee respectfully traverses that "Su further discloses classifying the audio signal occurs after decoding the audio signal". In Su, col. 4, line 65 – col. 5, line 10,

It is noted that in Su, "Once the speech signal 210 is routed to the rate determination controller 220, a predetermined flag in the header of the speech frame is analyzed to determine classification of the speech frame." Col. 6, Lines 59-62. The foregoing does not occur after decoding; in fact the foregoing occurs prior to encoding.

Accordingly, Assignee respectfully traverses the rejection because Su does not teach or fairly suggest "an output indicating a classification of the audio signal, wherein classifying the audio signal occurs after decoding the audio signal, and wherein indicating classification comprises turning on a flag in a header in a packet of digital information, wherein the flag may be used to determine whether the audio signal is mathematically processed further or directed to a receiver".

Because the combination of Jiang in view of Boland and in further view of Su fails to teach or suggest all the claim limitations as required by MPEP 2142, a rejection under 35 U.S.C. §103(a) cannot be maintained.

The Applicant respectfully submits that, based upon the above, the proposed combination of Jiang, Boland and Su fails to teach or suggest by themselves or in combination all of the limitations of Applicant's independent claims 1 and 16, and that the rejections of claim 1 and 16 under 35 U.S.C. §103(a) cannot be maintained. Therefore, Applicant respectfully requests that the rejections of claim 1 and 16 under 35 U.S.C. §103(a), be withdrawn.

Because each of the remaining claims depend, directly or indirectly, from independent claim 1 or 16, and because claims 1 and 16 are allowable over the proposed combination of references, the Applicant asserts that rejections of dependent claims are now moot and these claims are now allowable.

The Office Action makes various statements regarding the claims, 35 U.S.C. § 103(a), the Jiang reference, the Boland reference, the Su reference, the Yamada reference, the Manjunath reference, one of skill in the art, etc. that are now moot in view of the above amendments and/or arguments. Thus, the Applicants will not address all of such statements at the present time. However, the Applicants expressly reserve the right to challenge such statements in the future should the need arise (e.g., if such statements should become relevant by appearing in a rejection of any current or future claim).

CONCLUSION

Applicant respectfully submits that claims 1-13, 15-19 and 21-23 are in condition for allowance, and requests that the application be passed to issue.

Should anything remain in order to place the present application in condition for allowance, the Examiner is kindly invited to contact the undersigned at the telephone number listed below.

Please charge any required fees not paid herewith or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

Date: July 10, 2008   Respectfully submitted,

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